

FINANCIAL IMPACT OF THE REFERENDUM ON PROVISIONS RELATED TO THE COMMERCE TAX FROM SENATE BILL NO. 483 OF THE 2015 LEGISLATIVE SESSION PETITION

FINANCIAL IMPACT – YES

OVERVIEW

The Referendum on the Provisions Related to the Commerce Tax from Senate Bill No. 483 of the 2015 Legislative Session petition (Referendum) proposes to seek voter approval or disapproval of the provisions related to the Commerce Tax in Senate Bill 483 of the 2015 Legislative Session.

Pursuant to Article 19, Section 1 of the *Nevada Constitution*, a referendum proposing to approve or disapprove any statute or resolution, or part thereof, enacted by the Legislature is to be submitted to the voters at the next succeeding election at which the question may be voted on by the registered voters of the entire state. If the majority of the voters approve the statute or resolution, it shall stand as the law of the state and may not be amended, annulled, repealed, set aside, suspended, or in any way made inoperative without a direct vote of the people. If the majority of the voters reject the statute or resolution, it becomes void and has no effect, effective upon the canvass of the votes by the Nevada Supreme Court. If the Referendum qualifies for submission to the voters, it will appear on the 2018 General Election ballot, and the result of the Referendum will become effective on November 27, 2018.

The Nevada Commerce Tax is paid by certain businesses that have at least \$4 million in Nevada gross revenue during a taxable year, based on their industry-specific tax rate. The first payment of the tax was due August 15, 2016, for the taxable year ending on June 30, 2016, and this payment was recorded as State General Fund revenue for FY 2016 (July 1, 2015 – June 30, 2016).

Beginning in Fiscal Year 2017 (July 1, 2016 – June 30, 2017), a business that pays the Nevada Commerce Tax may take a credit of up to 50 percent of the Commerce Tax paid for the previous fiscal year against the business's Modified Business Tax liability in the current fiscal year.

A vote to approve the provisions related to the Commerce Tax would continue the requirement for businesses to pay the Nevada Commerce Tax as required pursuant to current law and would allow businesses to continue receiving the credit against the business's Modified Business Tax liability as provided for in current law. A vote to disapprove the provisions related to the Commerce Tax would eliminate liability for the Commerce Tax beginning with the taxable year ending on June 30, 2019. The credit of up to 50 percent of the Commerce Tax paid for the prior fiscal year against the Modified Business Tax liability in the current fiscal year would also be repealed effective with the Modified Business Tax payment due for the second quarter of Fiscal Year 2019 (October – December 2018), which would be paid on or before January 31, 2019. However, a taxpayer would be able to take any available credits based on Commerce Tax paid in Fiscal Year 2018 against the Modified Business Tax in the first quarter of Fiscal Year 2019 (July – September 2018), which would be paid on or before October 31, 2018.

FINANCIAL IMPACT OF THE INITIATIVE

If a majority of the voters approve the provisions of the Referendum, the provisions for the Commerce Tax and the credit for the Commerce Tax against the Modified Business Tax as approved in Senate Bill 483 would remain in effect, and the Referendum would result in no financial impact upon state or local government.

If a majority of the voters disapprove of the provisions of the Referendum, the Fiscal Analysis Division estimates that the repeal of the provisions related to the Commerce Tax and the credit for the Commerce Tax against the Modified Business Tax would impact the State General Fund revenues and Department of Taxation expenditures, as follows:

State General Fund Revenues

- Pursuant to NRS 363C.200, the due date for the Commerce Tax is 45 days after the end of the taxable year (July 1 – June 30). For the taxable year between July 1, 2018, and June 30, 2019, which represents Commerce Tax collections due to the state during Fiscal Year 2019, the first fiscal year for which the Referendum would become effective, the due date for Commerce Tax returns and payment would be August 14, 2019. If the provisions contained in the Referendum were disapproved by the voters, the Commerce Tax would not be collected for FY 2019, which would result in an estimated loss to the State General Fund of approximately \$195.0 million, based on the Economic Forum's May 1, 2017, forecast for this revenue source.

In addition, businesses would no longer be able to take a credit for their Commerce Tax paid in FY 2018 against the last three quarters of their Modified Business Tax liability in FY 2019, but would be able to use any available credits against their Modified Business Tax liability during the first quarter of FY 2019.

Based on information available from the Department of Taxation at the time of preparation of this financial impact statement, during Fiscal Year 2017 (the first fiscal year for which a credit for Commerce Tax paid could be taken against a business's Modified Business Tax liability), approximately 63.5 percent* of these credits that were taken during that fiscal year were taken during the first quarter of FY 2017. If the same percentage of credits were taken during the first quarter of FY 2019, based on the Economic Forum's May 1, 2017, forecast for Commerce Tax credits against the Modified Business Tax of \$93.0 million, the amount of credits that would be taken in the first quarter of FY 2019 would be \$59.1 million, and would result in an estimated gain to the State General Fund of approximately \$33.9 million for FY 2019.

Thus, assuming that approximately 63.5 percent of Commerce Tax credits that could be taken for FY 2019 are actually taken during the first quarter, the rejection of the provisions contained within the Referendum would result in an estimated loss to the State General Fund of approximately \$161.1 million in FY 2019. However, taxpayers may choose to take their Commerce Tax credits differently in FY 2019 because the credits may potentially be eliminated as a result of disapproval of the provisions in the Referendum or for other reasons. Thus, the amount of credits taken (and the net loss to the State General Fund) may be higher or lower than the amount estimated by the Fiscal Analysis Division in FY 2019.

Although it is clear there will be a net loss of State General Fund revenue in FY 2019 if the provisions contained in the Referendum are disapproved, the estimate of the loss included in this financial impact statement should be considered an estimate based on the best information available and the assumptions made by the Fiscal Analysis Division.

- If the provisions contained in the Referendum are disapproved, there would be no Commerce Tax collections in Fiscal Year 2020 or in future fiscal years. Assuming no growth in the Economic Forum's May 1, 2017, forecast for FY 2019, the elimination of the Commerce Tax would result in a loss in State General Fund revenue of approximately \$195.0 million per fiscal year.

The disapproval of the provisions of the Referendum would also eliminate the credit for Commerce Tax paid in the preceding fiscal year against the Modified Business Tax liability in the current fiscal year, which, assuming no growth in the Economic Forum's May 1, 2017, forecast for FY 2019, would result in an estimated gain in State General Fund revenue of approximately \$97.5 million per fiscal year.

Again, assuming no growth in the Economic Forum's May 1, 2017, forecast for FY 2019, the disapproval of the provisions of the Referendum would result in a net loss in State General Fund revenue of approximately \$97.5 million per fiscal year, beginning in Fiscal Year 2020.

Department of Taxation Expenditures

Based on information received from the Department of Taxation, the disapproval of the provisions of the Referendum would result in increased expenditures relating to programming changes required in the Department's Unified Tax System to accommodate the repeal of the Commerce Tax and the elimination of the credit against the Modified Business Tax. The Department additionally indicated that funding for staff and other expenditures approved by the Legislature during the 2017 Session relating to the administration of the Commerce Tax could be eliminated if the provisions of the Referendum are disapproved.

The Department estimates that the direct effect on the Department as a result of disapproval of the provisions of the Referendum would be a reduction in expenditures of approximately \$11,000 in FY 2019 and \$498,000 per year in FY 2020 and future fiscal years. The Department has indicated that the lower impact in FY 2019 is based on the Department's assumption that positions related to the Commerce Tax would continue to be employed through the end of the fiscal year, as needed, to support year-end filings and provide other tasks relating to the discontinuation of the Commerce Tax.

Total Financial Impact

Based on the assumptions made by the Fiscal Analysis Division regarding the estimated revenue loss and the information provided by the Department of Taxation regarding the decrease of expenditures resulting from disapproval of the provisions of the Referendum, the combined effect upon the state government would be a negative impact of approximately \$161.1 million in FY 2019 and approximately \$97.0 million per year in FY 2020 and future fiscal years.

** The percentage of 63.5 percent, as the percentage of Commerce Tax credits taken against the Modified Business Tax in the first quarter of FY 2017, was based on information provided by the Department of Taxation on August 29, 2017, for this version of the referendum filed on August 18, 2017. A percentage of 63.8 percent was used in the financial impact statement prepared for the version of the referendum filed on August 2, 2017, based on information provided by the Department of Taxation on August 15, 2017. The information has changed because the Department of Taxation is still accounting for actual FY 2017 Modified Business Tax collections, and the State Controller can still process transactions for FY 2017 until September 15, 2017.*

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